

DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

RECEIVED
SEP - 5 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Petition of WorldCom, Inc. Pursuant)
to Section 252(e)(5) of the)
Communications Act for Expedited)
Preemption of the Jurisdiction of the)
Virginia State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon-Virginia, Inc., and for)
Expedited Arbitration)

CC Docket No. 00-218

REBUTTAL TESTIMONY OF MATT HARTHUN

(Issues IV-120, IV-129, VI-1(P), VI-1(Q))

013

September 5, 2001

TABLE OF CONTENTS

Introduction.....	1
Issue IV-120.....	1
Issue IV-129.....	4
Issue VI-1(P)	5
Issue VI-1(Q)	6

1

2

3

7

9

1

2

6

7

8

9

0

1 moreover, that the self-executing remedies Verizon must pay in the event it fails to meet
2 performance standards are separate and not inconsistent with all other available remedies.

3
4 **Q. What does WorldCom's proposed language provide?**

5 A. The first and second sentences of WorldCom's proposed language accomplishes
6 the respective goals set out above. In mediation on this issue, Verizon raised a concern
7 with respect to the third sentence of WorldCom's proposed language, claiming that it
8 would allow WorldCom to recover full compensatory damages as well as full self-
9 executing remedies under a performance plan. As a result of the mediation talks,
10 WorldCom modified its proposed language to address Verizon's concern about double
11 recovery. The modified third sentence provides that, in the event WorldCom (MCIm)
12 actually receives payment under a performance plan and is also entitled to damages for
13 the same breach, the payment under the performance plan should be used to offset other
14 damages received by WorldCom for the same Verizon breach. The language that
15 WorldCom last proposed to Verizon is:

16 27.2 Unless otherwise specifically provided under this
17 Agreement, all remedies prescribed in this Agreement, or
18 otherwise available, are cumulative and are not intended to be
19 exclusive of other remedies to which the injured Party may be
20 entitled at law or equity. The Parties acknowledge that the self
21 executing remedies for performance standards failures set forth in
22 and incorporated into this Agreement are not inconsistent with any
23 other available remedy and are intended only to provide Verizon

1 with a financial incentive to meet performance standards.

2 However, the Parties agree that, while Verizon's responsibility to
3 pay these self-executing remedies is independent of any other
4 damages under this Agreement they may be used to mitigate any
5 such damages to the extent that they have been paid directly to
6 MCI and arise out of the same breach of this Agreement.

7

8 **Q. Please describe the Verizon Direct Testimony to which you are responding.**

9 A. Verizon has agreed to the inclusion of the first sentence of WorldCom's proposed
10 language above. Verizon appears to approve the inclusion of the second sentence as well
11 – it does not contest the inclusion of language that provides that the self-executing
12 remedies available under a performance plan are not inconsistent with any other available
13 remedy. In fact, it expressly agrees that WorldCom could be entitled to seek remedies
14 owed under a performance plan and other remedies as long as the first is used to offset
15 any other relief.

16

17 **Q. What is WorldCom's response to Verizon's Direct Testimony?**

18 A. In light of the modification to the last sentence proposed by WorldCom, Verizon
19 ostensibly should be amenable to including the modified last sentence. Verizon,
20 however, has not responded to WorldCom's offer of this modification.

1 **Issue IV-129**

2 **(Defining Terms in the Agreement)**

3 **Q. What is WorldCom's position on this issue?**

4 A. WorldCom believes that a section that lists the defined terms would benefit the
5 Interconnection Agreement currently under consideration by the Commission. Any delay
6 in defining terms, however, will likely cause the parties to commence a time-consuming
7 and contentious post-arbitration contract formation process.

8
9 **Q. Please describe the Verizon Direct Testimony to which you are responding.**

10 A. Verizon agrees that the Interconnection Agreement should include a definitions
11 section, but has not agreed to any of the definitions proposed by WorldCom. It indicates
12 that this issue should be resolved only after the resolution of other issues in the
13 Agreement.

14
15 **Q. What is WorldCom's response to Verizon's Direct Testimony?**

16 A. There is little if anything for WorldCom to assert on this issue that it already has
17 not asserted in its Direct Testimony. WorldCom believes that, to the extent the parties
18 cannot agree on definitions, the Commission should simply define the terms in a manner
19 that complies with the decision it will issue or as the terms may be defined by the Act, the
20 FCC rules and orders, or the industry at large. Leaving the definitions to post-arbitration
21 negotiations would needlessly put off resolution, and delay the implementation of the
22 Agreement. WorldCom agrees, as Verizon suggests, that the parties should work
23 cooperatively to identify definitions that are not in dispute (such as, presumably, "FCC").

1 That has not yet occurred due to the time constraints under which the parties have been
2 operating. The parties can continue to work on this and other issues over the next few
3 weeks, however, and will notify the Commission of any agreements they reach.

4
5 **Issue VI-1(P)**

6 **(Discontinuation of Service by WorldCom)**

7 **Q. What does Verizon assert in its Direct Testimony on this issue?**

8 A. In its quite cursory Direct Testimony, Verizon asserts that the language it has
9 proposed under this issue provides that WorldCom shall send advance written notice to
10 Verizon, the Commission and WorldCom's own customers of its actual or pending
11 discontinuation of service, and that this is appropriate because, when a CLEC fails, the
12 burden to maintain the customer's service will "inevitably" fall on Verizon.

13
14 **Q. What is WorldCom's response to Verizon's Direct Testimony on the issue?**

15 A. Without going into as much detail as I did in my Direct Testimony, I repeat that
16 WorldCom objects to the provision proposed by Verizon for several reasons – its
17 proposed language intrudes inappropriately on WorldCom's relationship with its
18 customers, is misdirected at financially strong companies like WorldCom, and, as a
19 general matter, confers too much authority on Verizon.

20 Moreover, as WorldCom stressed during mediation, it would be entirely
21 inappropriate to allow Verizon to receive advance notice of a competitor's impending
22 failure before other competitive carriers do so. This would simply give Verizon yet
23 another competitive advantage over other carriers under the guise of helping consumers.

Verizon's response does not even purport to address any of these issues. It simply asserts that inclusion of such a provision would be appropriate. Nor does it address the fact that the Virginia commission is already addressing this issue. In short, Verizon provides no support for its proposal.

Q. Since mediation has Verizon revised its proposed language?

A. Yes. Verizon offered WorldCom revised contract language regarding this issue, but did not address this revised proposal in its Direct Testimony. At first glance, the revised contract language suffers from many problems outlined above, but WorldCom is in the process of reviewing it and working with Verizon to reach mutually agreeable language.

Q. What does WorldCom request of the Commission on this issue?

A. WorldCom requests that the Commission reject Verizon's originally proposed language and its revised contract language on this issue.

Issue VI-1(Q)

(Insurance)

Q. What does Verizon assert in its Direct Testimony on this issue?

A. While recognizing that its "concern [on this issue] is not with WorldCom," Verizon proposes that WorldCom be required to maintain a particular level of insurance during and a "reasonable period after" the term of the Agreement. It suggests, in the alternative, that CLECs with a net worth in excess of \$100 million" may be self-insured.

1 **Q. What is WorldCom's response to Verizon's Direct Testimony on this issue?**

2 A. There are several problems with Verizon's proposed language. In short,
3 WorldCom believes that (1) Verizon's proposed language does not create mutual
4 insurance obligations; (2) the coverage limits that Verizon would require are too high; (3)
5 the disclosure requirement is unnecessary; (4) the 14 day time for WorldCom to provide
6 proof of insurance is too short; (5) WorldCom should not be held financially liable for the
7 insurance needs of independent subcontractors; and (6) WorldCom should not be
8 required to notify Verizon of any 'material changes' to its insurance coverage outside of
9 cancellation or reductions in coverage.

10
11 **Q. Does Verizon address any of these issues?**

12 A. No. Despite the fact that we made Verizon aware of our concerns during
13 mediation, it says nothing about any of these specific issues. Verizon has not responded
14 to the counter-proposed language that WorldCom made in its Response to Verizon's
15 Supplemental Issues dated June 18, 2001.

16
17 **Q. What about Verizon's offer to allow self-insurance if a carrier's net worth**
18 **exceeds \$100 million?**

19 A. This offer is slightly different from what Verizon offered in mediation. There
20 Verizon offered to waive entirely its proposed insurance provision if WorldCom satisfies
21 a \$100 million net worth exception.

22 Irrespective of this difference, WorldCom is mindful of the concerns Verizon
23 might have with other CLECs. WorldCom, however, should not be made to agree to

1 terms that, by all accounts, are plainly not appropriate for WorldCom. WorldCom has
2 been attempting to work with Verizon to agree on a carve-out (i.e., the \$100 million
3 exception). Again, however, WorldCom must be able to ensure that all of its subsidiaries
4 and affiliates will be able to take advantage of this agreement without being burdened by
5 unreasonable requirements such as the insurance provisions. If a carve-out can be
6 negotiated, WorldCom is willing to do so. If it cannot, however, it would be flatly
7 inappropriate to include the “Insurance” provision proposed by Verizon.

8 WorldCom notes additionally that it may choose not to self-insure. Thus, even if
9 a carve out could be negotiated, it would have to be done in a way that does not mandate
10 that WorldCom’s insurance be provisioned in any particular manner.

11
12 **Q. What does WorldCom request of the Commission on this issue?**

13 A. WorldCom requests that the Commission reject Verizon’s proposed contract
14 language on insurance. In the event that the Commission finds that the Agreement
15 should contain an insurance provision, however, WorldCom requests that the
16 Commission order inclusion of the insurance provision proposed by WorldCom in its
17 Response to Verizon’s Supplemental Issues dated June 18, 2001.

18
19 **Q. Does this conclude your testimony?**

20 A. Yes.


**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
Petition of WorldCom, Inc. Pursuant)	
to Section 252(e)(5) of the)	
Communications Act for Expedited)	
Preemption of the Jurisdiction of the)	CC Docket No. 00-218
Virginia State Corporation Commission)	
Regarding Interconnection Disputes)	
with Verizon-Virginia, Inc., and for)	
Expedited Arbitration)	

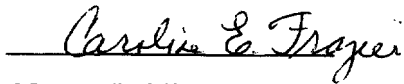
AFFIDAVIT OF MATTHEW HARTHUN

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Matthew Harthun, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Matthew Harthun

Subscribed and Sworn to before me this
5th day of September, 2001.



Notary Public
MY COMMISSION EXPIRES
JULY 14, 2004